


**ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS**

WASHINGTON, D. C. 20544

December 2, 2002

TRANSMITTAL 16 VOLUME VII CHAPTER Appendix D
FOR THE GUIDE TO JUDICIARY POLICIES AND PROCEDURES

TO: JUDGES, UNITED STATES COURTS OF APPEALS
JUDGES, UNITED STATES DISTRICT COURTS
UNITED STATES MAGISTRATE JUDGES
CIRCUIT EXECUTIVES
FEDERAL PUBLIC/COMMUNITY DEFENDERS
DISTRICT COURT EXECUTIVES
CLERKS, UNITED STATES COURTS OF APPEALS
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FROM: Leonidas Ralph Mecham 

SUBJECT: Revisions to Appointment of Counsel in Criminal Cases, Volume VII,
Guide to Judiciary Policies and Procedures

This transmittal provides changes to the Appointment of Counsel in Criminal Cases, Volume VII, *Guide to Judiciary Policies and Procedures*. Those changes are detailed below. Questions may be directed to the Defender Services Division, Duty Attorney, on 202-502-3030.

FILING INSTRUCTIONS (Keep this transmittal sheet in the front of the appropriate volume for reference):

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Insert Attached

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12/02/02

Change Code:
E = editorial
P = new policy/procedure
R = revised policy/procedure

Section-by-Section Comparison Chart

Type of Change	Old Information	New Information	Reason for Change
R	<p>Appendix D-8. AUDITS (last paragraph)</p> <p>The grantee may contract with local accountants or with the Auditor, for any accounting and financial services necessary for the operation of its office, including, but not limited to, the preparation of all required federal and state tax returns and any additional annual audit reports required by the Board of Directors that do not duplicate the national contract audit. Notwithstanding the foregoing, a grantee may use grant funds to contract with an expert for the purpose of responding to a finding of the Auditor in the annual audit when authorized in advance to do so by the Defender Services Division.</p>	<p>Appendix D-8. AUDITS (last paragraph)</p> <p>The grantee may contract with local accountants for any accounting and financial services necessary for the operation of its office, including, but not limited to, the preparation of all required federal and state tax returns; payroll, disbursing, and record-keeping services; and any additional annual audit reports required by the Board of Directors that do not duplicate the national contract audit. Notwithstanding the foregoing, a grantee may use grant funds to contract with an expert for the purpose of responding to a finding of the Auditor in the annual audit when authorized in advance to do so by the Defender Services Division.</p>	<p>This revision of the grant and conditions agreement eliminates permission for the community defender organizations to contract with the Administrative Office's contract auditor for financial services necessary for the operation of its office. This modification is consistent with newly revised auditor independence requirements under Standard 3.24 of the Government Auditing Standards.</p>

5. RETURN OF UNOBLIGATED OR UNEXPENDED BALANCES: Within 60 days of the end of the fiscal year, the grantee shall return to the A.O.'s Accounting Division the actual or estimated amount of all unobligated or unexpended grant funds, grant interest, and grant-related income remaining at the end of the fiscal year, unless otherwise authorized by the A.O. Along with funds returned, the grantee shall include a statement identifying which portion of the funds returned represents grant funds, grant interest, and grant-related income. The amount of any funds returned as an estimate will be adjusted, if necessary, following completion of the annual A.O. audit specified in clause 8.

6. ANNUAL REPORTS: As required by subsection (g)(2)(B) of the CJA, the grantee must submit an annual report setting forth its activities, financial position, the anticipated caseload, support services, and all other expenses for the coming fiscal year, and a current roster of attorneys and other personnel employed by the grantee. Instructions for completing the annual report and its date of submission will be provided to the grantee by the A.O. at least thirty (30) days prior to the submission date.

7. GRANT RECORDS AND REPORTS: The grantee shall keep financial books and all records in accordance with the federal fiscal year unless a waiver is granted by the A.O. Such records shall be maintained and submitted in such manner and form as required by the A.O. Such records shall disclose the amount of grant funds, grant interest, and grant-related income received during the fiscal year, as well as the amount of grant funds expended by budget category and the total amount of grant funds expended during the fiscal year.

The record keeping procedures utilized by the grantee shall provide for the accurate and timely recordation and determination of all income and funds received, all expenditures and obligations, and the balance of unexpended and unobligated grant funds, grant interest, and grant-related income. In addition, the grantee shall maintain the records in such a manner as to permit the determination of the propriety of all expenditures of grant funds and the charges to specific budget categories.

Grantee shall maintain records concerning expenditures of all funds subject to audit (as specified in Clause 8) in such a manner as to allow the Auditor access to said records without compromising client files and other attorney-client privileged material. The grantee is obligated to maintain the confidentiality of information protected by the attorney-client privilege or any ethical, Constitutional, statutory or other mandate.

The A.O. may inspect and audit the financial records, bank statements, and other records related to the expenditure of grant funds, except for privileged information, at any reasonable time upon request. If, because of inadequate records, documentation, or explanation, the propriety of an expenditure cannot readily be determined, questionable costs and expenditures may be disallowed.

The grantee shall maintain and submit such statistical records and reports as may be required by the A.O. The grantee must keep financial and statistical records and reports for a period of at least seven years after the expiration of the fiscal year for which the grant was awarded unless otherwise authorized by the A.O. If audit issues remain unresolved, records must be retained until all such issues have been resolved.

8. AUDITS: Within 120 days of the end of the fiscal year, a contract auditor (hereafter, "Auditor") selected and paid for by the A.O. will perform an audit of the grantee's financial activities occurring during the grant period. Such audit will express an opinion on whether the grantee's statement of financial position, report of revenue and expenditures by budget category (as designated in the approved grant), and inventory of equipment, furniture, and furnishings purchased with federal funds present fairly the financial position of the grantee.

The grantee will make its financial records/books and supporting documents available to the Auditor (as specified in clause 7) and will prepare or assist the Auditor in the compilation and preparation of the required statements and reports.

The Auditor will perform the audit in accordance with the Government Auditing Standards promulgated by the U.S. General Accounting Office. In accordance with those standards, the Auditor also will prepare a report on the grantee's internal controls over its financial activities and a report on the grantee's compliance with the terms and conditions of the grant and other rules and regulations pertinent to the grant. The Auditor will also adhere to the principles of confidentiality embodied in the Standards for the Monitoring and Evaluation of Providers of Legal Services to the Poor of the American Bar Association.

The grantee may contract with local accountants, for any accounting and financial services necessary for the operation of its office, including, but not limited to, the preparation of all required federal and state tax returns; payroll, disbursing, and record-keeping services, and any additional annual audit reports required by the Board of Directors that do not duplicate the national contract audit. Notwithstanding the foregoing, a grantee may use grant funds to contract with an expert for the purpose of responding to a finding of the Auditor in the annual audit when authorized in advance to do so by the Defender Services Division.

9. INFORMAL REPORTS: The grantee shall submit informal reports, at least semi-annually, setting forth its financial position. Additionally, the grantee shall submit to the A.O. quarterly statements of expenditures of grant funds in such form and manner as requested by the A.O. These reports need not be certified.

10. GRANTEE STATUS: Neither the grantee nor any of its employees are officers, employees, or agents of the United States. The United States shall in no way be obligated under leases, contracts, or other agreements entered into by the grantee.